

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

UNITED STATES OF AMERICA,	:	
	:	Case No. 1:16-cr-00092
Plaintiff,	:	
	:	
vs.	:	
	:	OPINION & ORDER
Andrew Davison,	:	[Resolving Docs. 157 , 159 , 161]
Defendant.	:	
	:	

JAMES S. GWIN, UNITED STATES DISTRICT JUDGE:

On June 18, 2019, the Court resentenced Defendant Andrew Davison.¹ On June 21, 2019, Defendant Davison appealed the final judgment and sentence.² The appeal is pending with the Sixth Circuit.

On March 4, 2020, Defendant Davison petitioned for habeas corpus relief under 28 U.S.C. § 2255.³ The Government did not respond to Defendant's petition, so Defendant moved for default judgment on his petition.⁴

"[I]n the absence of extraordinary circumstances, a district court is precluded from considering a § 2255 application for relief during the pendency of the applicant's direct appeal."⁵ Here, Davison's direct appeal is pending before the Sixth Circuit, and this case involves no extraordinary circumstances.

¹ Doc. [147](#); Doc. [148](#).

² Doc. [150](#).

³ Doc. [157](#).

⁴ Doc. [161](#).

⁵ *Capaldi v. Pontesso*, 135 F.3d 1122, 1124 (6th Cir. 1998); *see also United States v. Carman*, 933 F.3d 614, 615 (6th Cir. 2019) ("Subject to very few exceptions, the filing of a notice of appeal shifts from the district court to the court of appeals adjudicatory authority over any aspect of the case—here, [the defendant]'s conviction and sentence—involved in the appeal.").

Case No. 1:16-cr-00092
Gwin, J.

Therefore, the Court **DENIES WITHOUT PREJUDICE** Defendant's § 2255 petition and motion for default judgment. Defendant's related motion to proceed *in forma pauperis* is **DENIED AS MOOT**.

IT IS SO ORDERED.

Dated: June 3, 2020

s/ James S. Gwin
JAMES S. GWIN
UNITED STATES DISTRICT JUDGE